IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1113 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAVITABEN LAXMANSINH BHAGWANSINH JADAV

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 1113 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the Commissioner of Police, Vadodara City, Vadodara vide order dated January 20, 2001 in exercise of the powers conferred under sub-Section 2 of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has challenged the order of her

detention and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set her at liberty forthwith.

2. The grounds of detention order dated January 20, 2001 manifest that the petitioner is involved in four prohibition cases which are registered against her at different police stations of Vadodara City vide CR No. 17 of 1999, 302 of 1999, 267 of 1999 and 296 of 2000. As per the detaining authority, ordinary provisions of law are found to be insufficient to curb the anti social activities of the detenu and she has become an obstruction to the maintenance of public order and hence the impugned order of detention is passed against her.

3. It is contended by the petitioner that the allegations made against her are not correct and denied the same. The allegations made in the order are vague and there is no material to show that either she or her men have ever disturbed the public order at the time of commission of the aforesaid offences. The petitioner further contended that out of four offences, three offences are of 1999 and so far as the last offence is of 2000 and three months thereafter, order of detention came to be passed. Therefore, there is a delay in passing the order of detention after recording the last offence and on this ground alone, the impugned order of detention is vitiated. Therefore, it is liable to be quashed and set aside.

4. Mr. K.T.Dave, learned AGP, in counter submission contended that it is true that so far as the first three offences are concerned they are of 1999 whereas the last offence is registered in the year 2000. Thereafter, immediately within a period of three months, order of detention came to be passed and before passing the order, statements of witnesses were also recorded on December 20, 2000 and thereafter order of detention came to be passed and therefore, there is no delay in passing the impugned order. He, therefore, urges to dismiss the petition.

5. I have considered the submissions canvassed by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith including the impugned order.

6. It is true that three offences came to be registered in the year 1999 under the Prohibition Act whereas the last offence was registered on October 29,

2000. The petitioner/detenu was released on the same day and thereafter the detaining authority, for passing the impugned order, has relied upon the statements of the witnesses which came to be recorded on December 24, 2000 and verified by the detaining authority on January 20, 2001 and thereafter order came to be passed on January 20 2001. Therefore, it can be said that there is a delay in passing the order.

7. In this connection reference is required to be made to the judgement recorded by this Court in the case of Elesh Nandubhai Patel & Others Vs. Commissioner of Police Ahmadabad City & Others - 1997(1) GLH 381 wherein this Court has held that unexplained delay makes a ground of detention not proximate and it vitiates the order of detention itself and in view of the long gap of 5 months between the incident alleged and order of detention, continued detention was not desirable and the detention order was quashed.

8. Applying the said principles to the facts of the present case at the cost of repetition be it stated that last offence against the petitioner came to be registered on October 29, 2000 whereas the impugned order of detention came to be passed on January 20, 2001 i.e. after a period of three months and the delay of three months in passing the impugned order is unexplained by the detaining authority. Therefore, the detention order stands vitiated and the petition deserves to be allowed on this count alone.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 20, 2001 is hereby quashed and set-aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*